



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Samuel Pavone and Robert Wilgus

**File:** B-222948

**Date:** January 9, 1987

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### **DIGEST**

1. Claims received in the General Accounting Office (GAO) more than 6 years after they accrue are barred from consideration. Where claims for hazardous duty differentials were received in GAO on April 28, 1986, portions of the claims that accrued prior to April 29, 1980, cannot be considered for payment notwithstanding that they may have been filed earlier in the administrative office concerned.

2. Where employees' supervisor states that they were assigned to perform hazardous duty at Yuma Proving Ground and there is evidence showing that the employees actually traveled to Yuma and participated in test firings conducted on a range designated by regulation as hazardous, GAO cannot conclude that the determination made by the employees' agency to pay timely hazardous duty differential claims was arbitrary and capricious or erroneous.

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### **DECISION**

A certifying officer requests an advance decision to resolve the question of whether two employees of the Department of the Army may be paid hazardous pay differentials for various periods of temporary duty between 1975 and 1982.<sup>1/</sup> We are barred from considering any claims that accrued prior to April 29, 1980, which is 6 years before the claims were received in the General Accounting Office; however, claims that accrued after April 28, 1980, may be allowed.

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<sup>1/</sup> The requestor is the Finance and Accounting Officer for Headquarters, U.S. Army Armament, Munitions and Chemical Command, Dover, New Jersey.

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## FACTS

Samuel Pavone and Robert Wilgus were employed as engineering technicians in the Nuclear Projects Branch at Picatinny Arsenal, Dover, New Jersey, when they were ordered on various temporary duty assignments to provide mission support for M422 and XM785 projectile testing at Yuma Proving Ground, Arizona, between 1975 and 1982. The claims for hazardous pay differentials, which were not filed with their agency until June 1982, were based on representations that they entered the test area where they were exposed to hazards while recovering the fired projectiles. The claims were not received in this Office until April 28, 1986.

There is evidence in the record indicating that the area used for the test firings contained live unexploded projectiles, live fuses and rocket motors left from maneuvers conducted by General George Patton and that these munitions, which were in an uncertain and unstable condition, could be set off by vibration, shock, pressure or physical contact. The area used for the firings was officially recognized as a hazardous area in USAYPG Regulation No. 690-5, and work with or in proximity to unstable explosive material is listed in Appendix A to Federal Personnel Manual Supplement 990-2, Part 550, Subchapter 9 as duty for which a hazard pay differential is payable.

In support of the employees' claims, the Chief of Branch stated in 1982 that they were ordered to Yuma Proving Ground to perform hazardous duty, and the test program in which they were involved required recovery of the projectiles which had been fired during testing. He also concurred in the employees' statements that they were responsible for the recovery of artillery projectiles from the test area. The Picatinny Safety Officer concluded that the employees would appear to have been in a position to be exposed to the hazard.

In October 1984, the Picatinny Personnel Office determined that the employees were retroactively entitled to a hazardous pay differential for the periods of time they claimed to have performed hazardous duty. That determination was based on representations made by the employees as to the work performed at the test site, upon the statements of their supervisors and upon a correlation of the claimants' dates of temporary duty with Yuma firing records and evaluation reports. Yuma's Personnel Office stated that personnel actually participating in the recovery of projectiles are permitted in the hazardous area, and their records would

confirm that Picatinny personnel participated in the test program.

#### DISCUSSION

Claims against the Government are subject to a statutory limitation which bars from consideration claims not received by the Comptroller General within 6 years after they accrue. 31 U.S.C. § 3702(b)(1) (1982). On pay questions we have held that the claim accrues on the date the employee renders the service for which compensation is claimed, and filing the claim with any other Government agency does not toll the running of the 6-year period. See Sherwood T. Rodrigues, B-214533, July 23, 1984, and cases cited therein. See also 62 Comp. Gen. 80 (1982). The earliest correspondence on these claims was received in this Office on April 28, 1986. Therefore, any claim for hazardous duty alleged to have been performed prior to April 29, 1980, is forever barred from our consideration. As a result only claims relating to work alleged to have been performed after April 28, 1980, may be considered.

Concerning the merits of those claims which are timely filed, the law authorizes the payment of hazardous pay differential under specified circumstances where the employee is actually subjected to recognized hazards. 5 U.S.C. § 5545(d) (1982). Under the implementing regulations, differentials are payable only to those employees who are both assigned to and actually perform hazardous duty. 5 C.F.R. § 550.904.

We point out that the Comptroller General will overturn the agency's decision on employees' entitlement to hazardous duty differentials only where there is clear and convincing evidence that the agency's decision was erroneous or arbitrary and capricious. Ralph Von Dane, B-159295, March 28, 1983, and Joseph Contarino, et al., B-202182, January 19, 1982. We believe the determination here was based on sufficient proof that officially assigned hazardous duty was actually performed by Messrs. Pavone and Wilgus.

Travel vouchers place the employees at Yuma Proving Ground; time and attendance records show they were on duty for specified periods of time at the Proving Ground; and firing records and evaluation reports indicate that the employees participated in these test programs. There are also supporting statements by Picatinny officials. The Chief of Branch states that the employees were assigned to Yuma to perform hazardous duty and the Safety Officer stated that the employees would have been in a position to perform such duty.

Under these circumstances we cannot conclude that the agency's determination to pay the timely claims was arbitrary and capricious or erroneous.

Accordingly, the claims that accrued after April 28, 1980, may be allowed.

for *Harry R. Jan Clene*  
Comptroller General  
of the United States